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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/820,637

04/07/2004

Martin Dabreczeny

TYHC:0041/FLE (P0396R)

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10/18/2007

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EXAMINER

WINAKUR, ERIC FRANK

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/820,637

Applicant(s)

DEBRECZENY, MARTIN

Examiner

Eric F. Winakur

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

2. Claims 1 - 4, 13, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynolds. Reynolds teaches an apparatus, method of manufacture, and method of use, that includes separate optical fibers each having input ends for receiving light from separate light sources and output ends that are integrated with one another in an ordered array to produce output light that is intermixed in a composite manner (column 2, line 10 - column 3, line 1). The optical fibers have an inner core and outer sheath (cladding) (column 5, line 65 - column 6, line 9). Applicant's claimed apparatus and methods are patentably indistinguishable from the teaching of Reynolds.

Claim Rejections - 35 USC § 103

3. Claims 5 - 9, 11 - 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vari et al. (USPN 5,701,902 - previously cited) in view of Reynolds. Vari et al. teach an optical measurement arrangement (Figure 2) that includes first and second light sources (including emitters at 775, 810, 904 nm) for obtaining oxygen saturation information that are connected with a spatially-homogenizing means including optical fibers (48, 50, 52) for illuminating tissue and collecting light for transmission to a sensor 44. Details of the fiber arrangement are given in column 5, lines 13 - 37. Vari et al. teach that the optical fibers are randomly mixed. Alternately, Reynolds, as described in paragraph 2 above, teaches that a non-random (alternating,

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ordered array) arrangement of optical fibers from multiple sources has an intermixed, composite output. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Vari et al. to use a non-random arrangement of the optical fibers at the output, since Vari et al. require a mixed output of the light and Reynolds teaches an alternate manner to provide an intermixed, composite output from optical fibers and it has generally been held to be within the skill level of the art to implement alternate equivalent expedients.

4. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vari et al. and Reynolds as applied to claims 8 and 15 above, and further in view of Jeffcoat (USPN 5,036,853 - previously cited). Vari et al. teach an optical measurement arrangement that includes emitters for determining oxygen saturation information (column 6, lines 10 - 25) but do not particularly teach that one of the sources emits essentially in the red region of approximately 660 nm. Vari et al. teach that other optical arrangements may be used in their device (column 8, lines 59 - 67). Jeffcoat et al. teach an alternate optical measurement arrangement (Figure 4), similar to that of Vari et al., that includes an emitter 16 for 660 nm light and a second emitter 17 for 940 nm light (column 3, lines 4 - 15) that are connected by optical fibers by a single sending path 13 to a measurement location. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement the combination of Vari et al. and Reynolds with an emitter for 660 nm light, since Vari et al. teach that additional wavelengths may be included in their arrangement and Jeffcoat et al. teach that 660 nm light is useful in measuring oxygen saturation information.

Response to Arguments

5. Applicant's arguments with respect to claims 1 - 12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

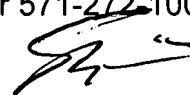
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571/272-4740. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eric F Winakur
Primary Examiner
Art Unit 3768